Falcon Wheel Division L.L.C. *and* General Truck Drivers, Chauffeurs & Helpers of San Pedro, Wilmington, Long Beach & Vicinity, Local 692, International Brotherhood of Teamsters, AFL–CIO. Cases 21–CA–34692 and 21–CA–34772

September 26, 2003

DECISION AND ORDER

BY MEMBERS LIEBMAN, SCHAUMBER, AND WALSH

The General Counsel seeks a default judgment[1] in this case on the ground that the Respondent has failed to file an answer to the amended consolidated complaint. On a charge and an amended charge filed in Case 21–CA–34692 on August 3 and October 29, 2001, and a charge filed in Case 21–CA–34772 on October 2, 2001, by the Union, the General Counsel issued the original consolidated complaint on December 4, 2001, against Falcon Wheel Division L.L.C., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the Act.[2]

Thereafter, on July 26, 2002, the Respondent and the Union entered into an informal Board settlement agreement, which was approved by the Regional Director for Region 21 on July 30, 2002. Among other things, the settlement required the Respondent to pay $64 to each of 85 individuals named in the settlement, and others who presented themselves to the Respondent, the Union, or the Region within 60 days from the approval of the settlement.[3] The settlement required the Respondent to provide Region 21 with proof that these individuals received the payments due them under the settlement agreement. The Respondent also agreed to post a notice to employees regarding the allegations of the complaint.

By letters dated September 26 and October 23, 2002, and January 24, 2003, the compliance officer for Region 21 requested that the Respondent comply with the terms of the settlement by providing copies of the backpay checks paid to the 85 individuals listed in the settlement. The January 24, 2003 letter also stated that if copies of the backpay checks were not received prior to January 29, 2003, the compliance officer would "recommend that the approval of the Agreement be withdrawn and a complaint issue." The Respondent did not reply to this request and, on January 29, 2003, the Regional Director notified the Respondent that she had withdrawn her approval of the settlement on that date.

Subsequently, on February 24, 2003, the General Counsel issued an amended consolidated complaint against the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the Act. The Respondent has not filed an answer to the amended consolidated complaint, despite being notified of the necessity of filing an answer.

On May 6, 2003, the General Counsel filed a Motion for Summary Judgment with the Board. On May 8, 2003, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the amended consolidated complaint affirmatively stated that unless an answer was filed by March 10, 2003, all the allegations in the complaint would be considered admitted. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated April 11, 2003, notified the Respondent that unless an answer was received by April 21, 2003, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation with a place of business located at 407 East Redondo Beach Boulevard, Gardena, California, has been engaged in the production and nonretail sale of wheels and other molded parts. During the 12-month period ending August 18, 2001, which period is representative of the Respondent's operations, the Respondent, in conducting its business operations described above, sold and shipped from its Gardena, California facility goods valued in excess of $50,000 directly to points outside of the State of California. We find that the Respondent is an employer

[1] The General Counsel's motion requests summary judgment on the ground that the Respondent has failed to file an answer to the complaint. Accordingly, we construe the General Counsel's motion as a Motion for Default Judgment.

[2] On March 19, 2002, the General Counsel issued an amendment to the consolidated complaint.

[3] Less applicable taxes, not to exceed 27 percent.

engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. We also find that General Truck Drivers, Chauffeurs & Helpers of San Pedro, Wilmington, Long Beach & Vicinity, Local 692, International Brotherhood of Teamsters, AFL–CIO (the Union), is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent (the unit), constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time production and maintenance employees employed by Respondent at its facility located at 407 E. Redondo Beach Boulevard, Gardena, California; excluding all other employees, office clerical employees, professional employees, guards, and supervisors as defined in the Act.

On September 27, 2000, the Union was certified as the exclusive collective-bargaining representative of the unit, and commencing on that date until May 22, 2002, based on Section 9(a) of the Act, the Union was the exclusive collective-bargaining representative of the unit. On May 22, 2002, the Union disclaimed interest in representing the unit.

At all material times, William Brown has held the position of the Respondent's manager, and has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act and an agent of the Respondent within the meaning of Section 2(13) of the Act.

On about June 7, 2001, the Union and the Respondent reached complete agreement on terms and conditions of employment of the unit to be incorporated in a collective-bargaining agreement (the agreement). Commencing about June 8, 2001, the Union requested that the Respondent execute a written contract containing the agreement. Since about June 8, 2001, the Respondent, by William Brown, has failed and refused to execute the agreement.

The agreement included a provision at article XXV that required wage increases. Commencing about June 8, 2001, the Union requested that the Respondent implement the wage increases called for in the agreement. Since about that date, the Respondent has failed and refused to implement the wage increases called for in the agreement.

Commencing about June 8, 2001, the Union, by letters dated June 8 and June 29, 2001; and by oral request on about July 11, 2001, requested that the Respondent furnish the Union with the following information: a current seniority list showing each employee's name, classification, date of hire, and current rate of pay. The information requested by the Union was necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.

At all times since about June 8, 2001, the Respondent, by William Brown, has failed and refused to furnish the Union with the information requested.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has failed and refused to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing since June 8, 2001, to execute a written contract containing the agreement reached on June 7, 2001, which included a provision at article XXV that required the implementation of wage increases, we shall order the Respondent to execute the agreement and implement the contractual wage increases.

We also shall order the Respondent to make the unit employees whole for any losses attributable to its failure to implement the wage increases required by article XXV of that agreement, as set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), with interest computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).[4]

In accordance with the General Counsel's unopposed request, we shall also order the Respondent to furnish the Union with the information that it requested in June 2001 and that the Respondent unlawfully failed to provide at that time. Although the Union disclaimed interest in representing the unit employees approximately a year later in May 2002, the "right of the Union to the information requested must be determined by the situation which

[4] The General Counsel's motion requests that the Board order the Respondent to provide the Region with proof that the employees named in the settlement received payment as required by its terms. We decline to provide this remedy. The requirement of proof of payment was part of the settlement that was set aside by the Regional Director, and is not an appropriate remedy for the alleged violations that we have found. If, in fact, the Respondent has paid certain amounts of backpay to the individuals named in the settlement, those payments may be taken into account during the compliance stage of this proceeding.

existed at the time the request was made, not at the time the Board or the courts get around to vindicating that right." *Mary Thompson Hospital*, 296 NLRB 1245, 1250 (1989), enfd. 943 F.2d 741 (7th Cir. 1991). More importantly, the information requested (a seniority list showing each employee's name, classification, date of hire, and rate of pay) has a direct bearing on the Respondent's contemporaneous and unlawful failure to implement the wage increases required by the parties' agreement. Contrary to our dissenting colleague's contention, there "would appear to be [a] reason under Board law to order production of [the] documents." See the discussion of Board and court law in *Government Employees Local 888 (Bayley-Seton Hospital)*, 323 NLRB 717, 720–721 (1997), suggesting that the Union may still have a duty of fair representation.

ORDER

The National Labor Relations Board orders that the Respondent, Falcon Wheel Division L.L.C., Gardena, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with General Truck Drivers, Chauffeurs & Helpers of San Pedro, Wilmington, Long Beach & Vicinity, Local 692, International Brotherhood of Teamsters, AFL–CIO, at a time when the Union was the exclusive collective-bargaining representative of the employees in the following unit, by failing and refusing to execute a written contract containing the parties' complete agreement on terms and conditions of employment of the unit. The unit is:

> All full-time and regular part-time production and maintenance employees employed by Respondent at its facility located at 407 E. Redondo Beach Boulevard, Gardena, California; excluding all other employees, office clerical employees, professional employees, guards, and supervisors as defined in the Act.

(b) Failing and refusing to implement the wage increases required by the agreement.

(c) Failing and refusing to furnish a requested seniority list of employees to the Union at a time when the Union represented the unit employees.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Execute the written contract containing the agreement reached by the Respondent and the Union on terms and conditions of employment of the unit.

(b) Implement the wage increases required by the agreement.

(c) Make unit employees whole for any loss of earnings they have suffered as a result of the Respondent's failure to implement the wage increases required by the parties' agreement, with interest, in the manner set forth in the remedy section of this decision.

(d) Furnish the Union with the information requested by it in June and July 2001: a current seniority list showing each employee's name, classification, date of hire, and current rate of pay.

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its facility in Gardena, California, copies of the attached notice marked "Appendix."[5] Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 8, 2001.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

[5] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Dated, Washington, D.C., September 26, 2003

Wilma B. Liebman, Member

Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER SCHAUMBER, dissenting in part.

I respectfully dissent in regard to part of the remedy imposed in this case. The General Counsel's motion requests that, as part of the remedy, the Respondent be ordered to furnish the Union with the information it requested in 2001. My colleagues grant this request. However, the Union disclaimed interest in representing the unit in May 2002, and it is no longer the employees' representative. Therefore, there is no reason under Board law to order production of documents the Union no longer needs to administer the collective-bargaining agreement. As such, the relief, once appropriate, is now inappropriate. What was once remedial now appears punitive.

In support of the majority's position, my colleagues cite *Mary Thompson Hospital*, 296 NLRB 1245 (1989). Surely, that case does not dictate the remedy imposed here. In *Mary Thompson*, the *employer* argued that it should not have to supply requested information because it had closed its doors and the bargaining unit no longer existed. Critically, the *union* in *Mary Thompson* continued to seek the requested information and to represent the employees who had been in the unit. Here, Charging Party Union disclaimed and walked away well over a year ago.

My colleagues state that the information may have a "direct bearing" on Respondent's unlawful failure to implement wage increases. That may be so but that observation offers no support for requiring that the information be supplied *to the Union*. The Union, having long ago disclaimed, will have no role in monitoring compliance with the Board's order—including its requirement regarding the payment of wage increases. That duty will fall to the Regional Office.

My colleagues also cite to *Government Employees Local 888 (Bayley-Seton Hospital)*, 323 NLRB 717 (1997), and suggest that the Union here may still have a duty of fair representation. But again, the Union walked away 16 months ago and, to date, no one has raised an issue of the Union's duty of fair representation. It is totally speculative, therefore, to suggest the Union might need the information it once requested to fulfill any such a duty to employees here.

Because I see no reason on this record to require the Respondent to provide information the Union neither needs nor wants, I dissent.

Dated, Washington, D.C., September 26, 2003

Peter C. Schaumber, Member

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain collectively and in good faith with General Truck Drivers, Chauffeurs & Helpers of San Pedro, Wilmington, Long Beach & Vicinity, Local 692, International Brotherhood of Teamsters, AFL–CIO, at a time when the Union was the exclusive collective-bargaining representative of the employees in the following unit, by failing and refusing to execute the written contract containing the parties' complete agreement on terms and conditions of employment of the unit. The unit is:

> All full-time and regular part-time production and maintenance employees employed by us at our facility located at 407 E. Redondo Beach Boulevard, Gardena, California; excluding all other employees, office clerical employees, professional employees, guards, and supervisors as defined in the Act.

WE WILL NOT fail and refuse to implement the wage increases required by the agreement.

WE WILL NOT fail and refuse to furnish a requested seniority list of employees to the Union at a time when the Union represented the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL execute the written contract containing the agreement reached by us and the Union on terms and conditions of employment of the unit.

WE WILL implement the wage increases required by the agreement.

WE WILL make unit employees whole for any loss of earnings they have suffered as a result of our failure to implement the wage increases required by the agreement, with interest.

WE WILL furnish the Union with the information requested by it in June and July 2001: a current seniority list showing each employee's name, classification, date of hire, and current rate of pay.

FALCON WHEEL DIVISION L.L.C.